

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1145 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL DURLABHJIBHAI

Versus

NITIN AMRITLAL

Appearance:

MR SURESH M SHAH for Petitioners
NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 06/07/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original plaintiffs - tenants, who had sued the respondents - defendants - landlords, for a declaration and prohibitory injunction restraining the

defendants - landlords from making any construction or alterations in the existing construction upon the Fali or Deli [which was the subject matter of the suit] on the specific ground that they were tenants in respect of the Fali and Deli, and that therefore, the landlords could not make any changes in the lease premises without their consent or a decree of the Court.

2. The plaintiffs contended that they had taken the specific premises on lease from the original owners before the father of the defendants became owner of the suit property.

3. It is pertinent to note that the very specific plea of the plaintiffs in respect of the suit property namely Fali and Deli [including the Chokadi which forms part of the Fali] is that they are the tenants of the Fali and Deli. In other words, they specifically claim that the Fali and Deli were let out to them and therefore, is in their exclusive possession, to the exclusion even of the landlords.

4. The trial Court on the total appreciation of the evidence on record came to the conclusion that the plaintiffs have failed to establish that they were tenants of the disputed premises. The tenants therefore filed an appeal u/s 29[1] of the Bombay Rent Act, which was heard and dismissed by the lower appellate Court, confirming the dismissal of the suit by the trial Court. Hence, the present revision at the instance of the original plaintiffs - tenants.

5. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be

possible.

6. Only a few salient features require to be noted.

6.1 The specific plea of the tenants, as pleaded in the plaint, and as disclosed from the evidence on record, and as dealt with by both the Courts below, is to the effect that the plaintiffs were tenants in respect of the Fali and Deli, and that therefore, the defendants landlords had no right to make any changes in the existing construction and / or to deprive the plaintiffs of their possession of any part of this premises etc. On a total appreciation of the evidence on record, both oral and documentary, both the Courts have found that the plaintiffs have failed to establish that they were tenants in respect of the Fali and Deli [including the Chokadi forming part of the Fali].

6.2 On the facts of the case, I do not see any reason to discuss once again the evidentiary material on record except to state that I have gone through the same with the assistance of the learned counsel for the petitioner. Even on re-appreciation of the same, I find that there is no justifiable reason for taking another view of the matter.

7. Learned counsel for the petitioner however seeks to raise another point in the present revision, which to my mind is an attempt to make out a new case altogether, a case which was neither pleaded nor attempted to be proved either before the trial Court or before the lower appellate Court.

7.1 Learned counsel for the petitioner submitted that looking to the pleadings of the parties, the plaint should be construed in a manner where the plaintiffs do not assert tenancy rights in respect of the subject matter of the suit, but merely assert that they have a right to continue to use and utilize the subject matter of the suit for the beneficial enjoyment of the premises actually rented out to them. Firstly, this is a new case being sought to be made out for the first time in the present revision, which is not permissible.

7.2 Even otherwise, on a careful perusal of the plaint, and particularly para 2 thereof, I find that it is not possible to construe the pleadings in the plaint so as to imply that the plaintiffs were not specifically claiming tenancy rights in respect of the suit property, but were claiming only the rights to utilize the same for the purpose of beneficial enjoyment of other premises let

out to them. I have also carefully considered the oral evidence led by both the parties, and I find that no where in the oral evidence of the plaintiffs has the case of beneficial enjoyment been propounded or put forward. On the contrary, the plaintiffs have in their oral evidence continuously struggled to establish the direct right of tenancy in respect of the suit property.

7.3 There is another reason why I am not inclined to permit this new plea to be taken up. A claim to tenancy in respect of the suit premises presupposes that a tenant is in possession of the same in his capacity as a tenant, and has therefore exclusive possession of the rented premises, which is exclusive even in respect of the landlord [except for lawful purposes or as may be directed by a Court decree]. On the other hand, a tenant who pleads a mere right of user for the purpose of beneficial enjoyment of the leased premises is in fact conceding that he does not hold exclusive possession of the same. In my opinion, therefore, these two pleas are mutually exclusive, and for this reason also, the same cannot be entertained at this stage.

8. In the premises aforesaid, I find that there is no substance in the present revision and the same therefore requires to be dismissed. Accordingly, this revision is dismissed and rule is discharged with no orders as to costs. Interim relief stands vacated.

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